THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.15739 OF 2005

AND

WRIT PETITION NO. 16584 OF 2005

Dated: 5th December, 2005.

Between:

M/s. Siddartha Consultancy Services P Limited,
Garages No.15 & 16, House No.3-6-20,
Tirumala Apartments, Skyline Theatre road,
Himayat Nagar, Hyderabad, rep. by its Director
Dr. Jayasree Reddy … Petitioner

And

1. Andhra Pradesh Industrial Development Corporation Limited, Parishram Bhavan, First floor, Basheerbagh, Hyderabad, rep. By its Assistant General Manager (Legal)
2. Sri C. Dayakar Reddy, Managing Director, M/s. Siddartha Health Care Limited (CDR Hospital), 3-6-287, Hyderguda, Hyderabad. … Respondents

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COMMON ORDER :

These two writ petitions which are based on the same set of facts involve common questions of fact and law and therefore they are heard together and decided by this common order.

The brief facts, may be noted as under :

M/s. Siddartha Health Care Limited – the 2nd respondent in both the writ petitions availed financial assistance by way of term loan from the 1st respondent - Andhra Pradesh Industrial Development Corporation Limited in the year 1999. For the said term loan, M/s. Siddartha Consultancy Services Private Limited who is the petitioner in both the writ petitions offered its properties as collateral security. It is stated that the property situated in Plot No.19, Block No.45, TS.No.1031-part at Waltair Road, Visakhapatnam admeasuring 860 sq.yards (which is the subject-matter of W.P.No.16584 of 2005) as well as the shop Nos.15 and 16, H.No.3-6-20, Tirumala Apartments, Skyline Theatre Road, Himayatnagar, Hyderabad (which is the subject-matter of W.P.No.15739 of 2005) belong to the petitioner and the same were offered as security.

These two writ petitions have been filed seeking a declaration that the action of the first respondent Corporation in initiating auction proceedings for sale of the above properties as arbitrary and illegal on the ground that there was no notice to the petitioner before proceeding with sale of the property in question. It is also contended that before proceeding with the sale, the first respondent Corporation ought to have offered the property in question to the petitioner for sale and the property should have been put to auction only if the petitioner is not willing to purchase the same.

The learned Counsel for the petitioner though does not dispute the fact that the liability of the petitioner as guarantor is co-extensive with that of the principal debtor submits that before initiating action for realization of the debt of the principal debtor by sale of the property offered as collateral security, it is necessary for the first

respondent to put the guarantor on notice and in the absence of the same, the entire proceedings are vitiated. That apart, while placing reliance upon the decision in MAHESH CHANDRA vs. REGIONAL MANAGER, U.P. FINANCIAL CORPORATION & ORS., the learned Counsel contended that the first respondent Corporation ought to have offered the property for sale in the first instance to the petitioner.

On the other hand, the learned Counsel appearing for the Corporation submits that as a matter of fact the petitioner herein was put on notice before conducting auction of the properties in question. The learned Counsel also submits that the petitioner was very well aware of the sale proceedings. It is also contended that the decision in MAHESH CHANDRA'S case (1 supra) is no more good law in view of the later decision of the Supreme Court in which it was overruled.

It is relevant to note that in the counter-affidavit filed on behalf of the first respondent Corporation, it is stated that when the principal debtor committed default in payment of the amounts due to the Corporation, notices were issued to the owners of the property offered as collateral security including the petitioner. Notice dated 31-10-2004 was issued to the writ petitioner duly informing about the default committed by the second respondent in payment of the amounts due to the first respondent Corporation and calling upon the petitioner to pay the amounts due on or before 15-2-2004. It was also stated in the said notice that if the amounts due were not paid, the Corporation would be constrained to take steps to seize the properties offered as collateral security and put the same to sale under Section 29 of the State Financial Corporations Act, 1951. The petitioner having received the said notice, addressed a letter dated 19-2-2005 stating that it wants to retain the properties
offered as collateral security by paying a sum of Rs.2 lakhs. Thus, it is clear that the petitioner had prior notice of sale. It is also stated that the first respondent Corporation directed all the owners of the collateral securities including the petitioner to participate in the auction to be conducted by the Corporation. Accordingly, one of the owners of the collateral security properties by name Sri N.Sridhar Reddy participated in the auction on behalf of all the owners of the properties offered as collateral security. However, one Sri Govind Kumar Lohia who offered a sum of Rs.30.10 lakhs was declared as the successful bidder and the said

offer was placed before the Board of the first respondent Corporation on 25-6-2005. Thereafter, the Board had also negotiated with both Sri N.Sridhar Reddy and Sri Govind Kumar Lohia on the following lines :

> *"a) Sri N. Sridhar Reddy shall pay the sale consideration of Rs.30.10 lakhs immediately i.e., within one week from the date of confirmation of the sale.*
>
> *b) In the event Sri N.Sridhar Reddy fails to pay the amount as above then Sri Govind Kumar Lohia shall match the price of Sri N.Sridhar Reddy, i.e., Rs.30.10 lakhs and pay the said amount within one week from the date of confirmation of the sale."*

Accordingly, the same was informed to Sri N.Sridhar Reddy by letter dated 1-7-2005. However, he failed to deposit the amount within one week. Hence, the sale was confirmed in favour of the successful bidder and he deposited the entire amount of Rs.30.10 lakhs within the time stipulated. Thus the first respondent Corporation had given ample opportunity to the petitioner, but the same could not be availed. Hence, the writ petitions are misconceived and liable to be dismissed.

Under Section 29 of the A.P. State Financial Corporations Act, 1951 where any industrial concern which is under a liability to the Financial Corporation under an agreement makes any default in repayment of any loan or otherwise fails to comply with the terms of its agreement, the Financial Corporation shall have the right to transfer by way of lease or sale and realise the property mortgaged or hypothecated to the Financial Corporation. In the case on hand, it is not in dispute that the 2nd respondent obtained a loan from the 1st respondent Corporation and the properties belonging to the writ petitioner which are the subject-matter of these two writ petitions were offered as collateral security. It is also not in dispute that the 2nd respondent who is the principal debtor committed default in payment of dues to the 1st respondent Corporation. In the circumstances, the properties in question were brought to sale under the impugned notices. As a matter of fact, the sale was already affected, however the same could not be finalized due to pendency of these writ petitions.

With regard to the 1st objection raised by the petitioner that the petitioner was not put on notice about the impugned auction, the 1st respondent Corporation pleads that the petitioner was informed by notice dated 31-1-2004 about the fact that the 2nd respondent committed default and calling upon him to pay the amounts due on or before 15-2-2004. In the said notice, it was also specifically mentioned that if the amounts due are not paid the 1st respondent would be constrained to take steps to seize the properties offered as collateral security and put the same to sale under Section 29 of the Act. The material placed before this Court by the 1st respondent Corporation shows that the said notice was received by the petitioner. As a matter of fact, having received the said notice, the petitioner responded expressing its willingness to retain the properties in question. Hence, the allegation that there was no prior notice to the petitioner is incorrect and without any basis. So far as the contention that the 1st respondent Corporation ought to have offered the property to purchase the properties in question to the petitioner in the first instance is concerned, the learned Counsel for the petitioner relied upon a decision in MAHESH CHANDRA'S case (1 supra).

It is to be noted that the said decision was overruled by a later decision of the Supreme Court in HARYANA FINANCIAL CORPN. v. JAGDAMBA OIL MILLS observing as under :

> *"The view in Mahesh Chandra's case (1 supra) appears to have been too widely expressed without taking note of the ground realities and the intended objects of the statute. If the guidelines as indicated are to be strictly followed, it would be giving permission to a dishonest borrower. It would not further the interest of any Corporation and consequently of the industrial undertakings intending to avail financial assistance. It would only provide an unwarranted opportunity to the defaulter (in most cases chronic and deliberate) to stall recovery proceedings. It is not to be understood that in every case the Corporations shall take recourse to action under Section 29. Procedure to be followed, needless to say, has to be observed. If any reason is indicated or cause shown for the default, the same has to be considered in its proper perspective and a conscious decision has to be taken as to whether action under Section 29 of the Act is called for. Thereafter, the modalities for disposal of seized unit have to be worked out. The view expressed in* ***U.P. Financial Corpn. v. Gem Cap (India) (P) Ltd. { (1993) 2 SCC 299 }*** *appears to be more in line with the*

legislative intent."

In the light of the above observations made by the Supreme Court, I am unable to hold that the impugned auction was vitiated on the ground that the same was held without affording an opportunity to the petitioner to purchase the same. From the factual aspects noted above, it is clear that the 2nd respondent who is the principal borrower was a defaulter and the petitioners who offered their properties as collateral security failed to take any steps for repayment of the amounts due in spite of the opportunities afforded. It is also not in dispute that the auction was already conducted and the successful bidder has deposited the entire sale consideration. Hence, I am of the opinion that the interference of this Court is not warranted.

Though the learned Counsel for the petitioner across the bar submitted that the petitioner is ready and willing to pay the entire amount due and therefore they may be permitted to retain the property to meet the ends of justice, I am unable to agree.

As expressed above, the action of the 1st respondent in taking steps under Section 29 of the Act and proceeding with the impugned sale does not suffer from any infirmity and therefore I do not find any justifiable reason to grant the relief as prayed for.

Accordingly, the Writ Petitions are dismissed. No costs.

5th December, 2005.

Gbs